

**CLASS- B.A.LL.B VIIIth SEMESTER**  
**SUBJECT- ADMINISTRATIVE LAW**  
**PAPER CODE- 801**

**STATE LIABILITY UNDER TORT**

The liability of the government in tort is governed by the principles of public law inherited from British Common law and the provisions of the Constitution. It mainly focuses on the recognition of the liability and providing compensation to the citizens especially by the judiciary in the event of legal injury. Tortious Liability emerges from the breach of an obligation essentially settled by the law: this obligation is towards persons by and large and its breach is redressible by an activity for unliquidated damages.

Article 300 of Indian Constitution talks about the tortious liability of the State-

(1) The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

(2) If at the commencement of this Constitution

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

In **State v. Devilal shivlal**<sup>1</sup> the court held that Where the tortious liability Act is committed by a public servant in discharge of his statutory functions. It also delegates the sovereign powers and the State of such as public servant, an action for damages for loss caused by such tortious liability act will not lie. The revenue authority has discharged the statutory powers.

In **Devaki nandan Prasad v. State of Bihar**<sup>2</sup> the court held that It was the breakthrough case under liability of state which adjudged the novel concept of compensatory jurisdiction and constitutional tort. In the Judgement the court apart from granting the petition also provided for a sum Rs.25,000/- as exemplary cost.

In **peninsular and oriental steam navigation co. v. secretary of state** for India the court held that the accident of Plaintiff due to the negligence of Government Servants. The case is also significant apart from State liability it also showcased the distinction between sovereign and non-sovereign functions of state.

**Saheli v. Commissioner of Police**<sup>3</sup> was another milestone in the evaluation of compensation jurisprudence in writ courts. The masterpiece judgement in Vidyawati, which was freezed by Kasturi Lal was rightly quoted in this case. The State was held liable for the death of nine year old child by Police assault and beating. Delhi Administration was ordered to pay compensation of Rs. 75000/-. The significance of this case is that firstly, the revival of Vidyawati ratio and secondly that the Delhi Administration was allowed to recover money from those officers who are held responsible for this incident.

Another landmark judgement was **Nilabati Behra v. State of Orissa**<sup>4</sup> awarding compensation to the petitioner for the death of her son in police custody. The court held that a claim in public law for compensation for violation of human rights and fundamental freedoms, the protection remedy for enforcement and protection of such right, is distinct from and in addition to the remedy in private law damages for tort. The court expressly held that principle of sovereign immunity does not apply to the public law remedies under Article 32 and Article 226 for the enforcement of fundamental rights.

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<sup>1</sup> AIR 1970 MP 179.

<sup>2</sup> AIR 1971 SC 1409

<sup>3</sup> AIR 1990 SC 513

<sup>4</sup> AIR 1993 SC 1960

**Rudul Shah v. State of Bihar**<sup>5</sup> the court held that it would be mere service as to Protection of fundamental rights if the petitioner is not awarded the optimal compensation and it includes concept of constitutional tort was highlighted.

In **Kasturi Lal v. State of UP**<sup>6</sup> it was held by the Apex Court that the claim against the state could not be sustained despite the fact that the negligent act was committed by the employees during the course of their employment because the employment was of a category which could claim the special characteristic of a sovereign power. The court held that the tortious act of the police officers was committed by them in discharge of sovereign powers and the state was therefore not liable for the damages caused to the appellant.

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<sup>5</sup> (1983) 4 SCC 141

<sup>6</sup> 1987 SCR (1) 86.